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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Petition for Rulemaking)
of Pacific Bell Mobile Services) RM-8643
Regarding a Plan for Sharing)
the Costs of Microwave Relocation)

REPLY COMMENTS OF UTAM, INC.

UTAM, Inc., the frequency coordinator for the unlicensed PCS spectrum, hereby submits its reply comments in the above-captioned proceeding. UTAM was the first party to recommend that the Commission adopt rules for the sharing of the relocation costs associated with the transition of the 2 GHz band from fixed microwave use to PCS. The FCC declined to adopt cost sharing rules at that time.¹ Nonetheless, UTAM continues to believe that an appropriate cost sharing plan will benefit all parties involved in the relocations.²

In response to a petition filed by Pacific Bell Mobile Services,³ an industry consensus plan has been submitted by the Personal Communications Industry Association (PCIA) that appears to address the Commission's earlier concerns while at

¹ See Third Memorandum Opinion and Order, 9 FCC Rcd 6908, 6915 ¶¶ 35-41 (1994).

² Comments of UTAM, Inc., GEN Docket No. 90-314 (filed Apr. 22, 1994).

³ See Petition for Rulemaking of Pacific Bell Mobile Services, RM-8643 (filed May 5, 1995).

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the same time incorporating necessary improvements.⁴ UTAM supports PCIA's cost sharing plan with certain clarifications to take into account the unique characteristics of unlicensed PCS. Therefore, UTAM urges the FCC to initiate promptly a rulemaking to adopt the cost sharing plan proposed by PCIA as clarified below. Such expeditious action is critical given the imminent deployment of PCS products and the importance of a cost sharing mechanism to the full realization of the benefits of these important new products and services.

I. INTRODUCTION AND SUMMARY

UTAM believes that the cost sharing plan proposed by PCIA will benefit all parties involved in the transition of the 2 GHz band. The PCIA plan fairly allocates microwave relocation costs among PCS providers while ensuring that any premiums for early relocation are paid by the relocating PCS provider and not later market entrants. In addition, the cap on shared costs protects PCS providers from being burdened by any unwarranted relocation costs determined in negotiations in which they did not participate. The plan also will benefit microwave incumbents by facilitating the relocation of entire networks, rather than individual links, and lowering transaction costs associated with the relocation process.

⁴ Comments of the Personal Communications Industry Association, RM-8643 (filed June 15, 1995) [hereinafter "PCIA Comments"].

UTAM notes that PCIA proposes a deferred payment option that will be available to UTAM and designated entities. This provision properly recognizes that such entities have limited access to capital. Indeed, any rules adopted by the Commission must recognize that UTAM will be funding the relocation of microwave links from the unlicensed band through clearing fees collected on the deployment of coordinatable devices. Thus, UTAM's ability to make cost sharing payments will be limited by the clearing fees it is able to collect. UTAM believes that PCIA's proposed deferred payment option, with this understanding, could accommodate the unique needs of UTAM.

The PCIA proposal is designed for a licensed PCS framework. Accordingly, clarification is needed to adapt the proposal to the realities of unlicensed PCS. Under the UTAM Plan, the deployment of unlicensed devices will be limited by the level of microwave activity until the band is cleared. Therefore, UTAM should be deemed to benefit from a microwave relocation only after such time as UTAM declares an MTA open for unrestricted deployment of unlicensed PCS products. Prior to that time, unlicensed PCS products will be deployed on a coordinated basis. Accordingly, no benefit arises to UTAM until power caps are removed and unrestricted deployment is permitted.

With this clarification, the PCIA proposal would take into account the differences between licensed and unlicensed PCS and the constraints on UTAM's ability to raise funds for the relocation of microwave incumbents. The resulting

program for cost sharing would be fair to all PCS providers and expedite the deployment of licensed and unlicensed PCS services to the American public.

II. UTAM SUPPORTS THE PCIA CONSENSUS PROPOSAL, WHICH WILL BENEFIT BOTH PCS PROVIDERS AND MICROWAVE INCUMBENTS

The consensus cost sharing plan developed by PCIA accomplishes several goals needed to ensure the expeditious relocation of microwave incumbents. First, the PCIA plan will allow for the fair sharing of relocation costs among PCS providers benefitting from microwave relocations. PCIA has proposed that the actual costs of relocating a microwave link be shared among the benefitting providers according to a formula developed by Professor Paul Milgrom. This formula was derived based on the time the PCS provider enters the market, the actual expenses of relocation, and the number of PCS providers who benefit.

The formula, together with the proposed cap on reimbursable costs of \$250,000 per link with an additional \$150,000 if a new tower is required, ensures that later market entrants are not subject to excessive cost sharing obligations when they had no part in the negotiations.⁵ Moreover, by making only actual relocation costs subject to cost sharing, PCS providers are assured that any premium above the costs of a comparable system paid for the early relocation of a link will be borne entirely by the PCS provider benefitting from the early relocation, and not by later market entrants.

⁵ PCIA Comments at 10-13.

Second, PCIA's plan will increase the efficient deployment of PCS products and services without imposing excessive administrative burdens on PCS providers or the FCC. Under the PCIA proposal, cost sharing will be required only when a PCS provider's system would have caused interference to or received interference from a co-channel microwave incumbent in that provider's service area.⁶ UTAM questions whether reference to situations in which a PCS provider suffers harmful interference from an incumbent is practical given the lack of standards for determining under what conditions such interference exists. By limiting a PCS provider's obligations to situations in which interference is caused by a PCS provider to a co-channel incumbent, the obligations to cost share can be determined by reference to TIA Bulletin 10F or another industry accepted standard, and the number of contributing providers will be appropriately limited. This will ensure that administrative costs will not exceed the expected efficiency benefits from the plan.

In addition, a privately established clearinghouse authorized under Section 332 of the Act would administer the payment system for the PCS industry and resolve disputes arising between participants.⁷ The FCC can thus limit its involvement in overseeing the cost sharing mechanism to the consideration of complaints as part of the license renewal process and thereby encourage industry members to settle their differences through the clearinghouse.

⁶ PCIA Comments at 10-11.

⁷ PCIA Comments at 17-18.

The PCIA proposal also recognizes the limitations on UTAM and designated entity access to capital. The proposal extends a deferred payment option to such entities. UTAM believes that this is an important and equitable approach to accommodating real world financial constraints.

Finally, the cost sharing mechanism proposed by PCIA will significantly facilitate the entire transition process for the microwave incumbents currently located in the PCS spectrum. Microwave incumbents have continued to express concern that it is substantially more efficient for both them and PCS providers to relocate an incumbent's entire network at the same time, rather than link-by-link.⁸ PCIA's cost sharing plan will allow a PCS provider to fund the relocation of an incumbent's network and then collect 100% of the actual relocation costs of the links with which the relocater does not interfere (up to the amount of the cap) from PCS providers who enter the market later and would have caused interference to links in the microwave system had they not been relocated.⁹ This will encourage PCS providers to work with microwave incumbents to relocate an entire microwave network rather than individual links because they can seek reimbursement from other PCS providers when the latter enter the market.

⁸ See, e.g., Comments of American Petroleum Institute, RM-8643 at 7 (filed June 15, 1995); Comments of Metropolitan Water District of Southern California, RM-8643 at 4 (filed June 15, 1995); Comments of UTC, RM-8643 at 5 (filed June 15, 1995).

⁹ The PCIA cost sharing plan only applies to relocations of microwave incumbents located between 1850-1990 MHz. Therefore, any relocation of links outside these frequencies is not encompassed by the proposal.

* * *

UTAM believes that PCIA's cost sharing proposal will facilitate the transition process to the benefit of PCS providers, microwave incumbents and the public, while allocating cost sharing expenses in a fair and equitable manner. However, the clarifications detailed below are critical to realization of these benefits by the unlicensed community.

III. THE COST SHARING RULES ADOPTED BY THE FCC MUST TAKE INTO ACCOUNT THE UNIQUE CIRCUMSTANCES FACING THE UNLICENSED PCS INDUSTRY

Although UTAM believes that PCIA's proposed cost sharing mechanism will ease the transition of the 2 GHz band from fixed microwave use to PCS, the plan has been developed from the perspective of the licensed PCS industry and needs to take into account the differences between licensed and unlicensed PCS if it is to be effective. Because the unlicensed PCS spectrum is open to use by all manufacturers of unlicensed products, UTAM, Inc. was formed by members of the industry to propose a mechanism to relocate the incumbents from the band. After submission of a detailed plan to the FCC, UTAM was confirmed as the frequency coordinator for the unlicensed spectrum to manage the transition of the band.¹⁰

¹⁰ Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314 (Apr. 19, 1995)("Fourth Memorandum Opinion and Order").

To finance the microwave relocation process, UTAM will collect clearing fees from manufacturers deploying coordinatable¹¹ unlicensed products and use these funds to relocate incumbents currently using the unlicensed spectrum. As links are relocated, greater deployment of coordinatable unlicensed PCS systems and devices will be permitted, increasing the funds available for future relocations and, ultimately, allowing the entire unlicensed spectrum to be cleared. Thus, the pace of UTAM's relocation of links, and its ability to meet any cost sharing obligations, will be dictated by the number of coordinatable devices deployed and the clearing fees raised. The following clarification to the PCIA plan is required to accommodate these unique circumstances of unlicensed PCS and ensure that manufacturers are treated fairly in the cost sharing process.

Any cost sharing plan involving UTAM should specify that unlicensed device manufacturers are deemed to benefit from a microwave relocation only when UTAM declares an MTA containing one of the link's endpoints to be open for unlimited deployment with no power level cap. Until the cap is lifted, unlicensed PCS deployment is allowed only on a coordinated basis. This standard will ensure that cost sharing obligations will not attach to UTAM until its member manufacturers can truly benefit from the expenditure in terms of increased equipment deployment opportunities.

¹¹ A coordinatable PCS device must incorporate ". . . means that ensure that it cannot be activated until its location has been coordinated by UTAM, Inc." and ". . . an automatic mechanism for disabling operation in the event it is moved outside the geographic area where its operation has been coordinated by UTAM, Inc." See 47 C.F.R. §15.307 (d) and (e).

It also will serve to better coordinate the receipt of additional clearing revenues with the imposition of increased funding demands from cost sharing.


IV. CONCLUSION

UTAM fully supports the establishment of a cost sharing mechanism to facilitate the relocation of microwave incumbents from PCS spectrum. PCIA's plan could accomplish the goals of equitably allocating relocation costs, efficiently administering the cost sharing payment system, and easing the transition process for microwave incumbents. The clarification suggested by UTAM will ensure that the cost sharing plan will not excessively burden UTAM's limited resources or otherwise impede the deployment of unlicensed PCS, while treating manufacturers fairly vis-a-vis PCS licensees. For the foregoing reasons, UTAM urges the Commission to institute a

rulemaking to adopt rules implementing the PCIA cost sharing plan with the clarifications identified herein.

Respectfully submitted,

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June 30, 1995

CERTIFICATE OF SERVICE

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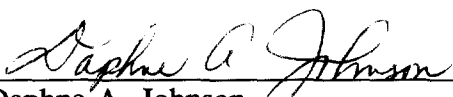
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